

**APPROVED JUDGMENT**  
**No Redaction Needed**



**THE COURT OF APPEAL**

**Record No: 161CJA/2023**

**Edwards J.**  
**Kennedy J.**  
**Ní Raifeartaigh J.**

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 2 OF THE CRIMINAL  
JUSTICE ACT 1993**

**Between/**

**THE PEOPLE**

**(AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)**

**Applicant**

**V**

**JAKE O’SULLIVAN**

**Respondent**

**JUDGMENT of the Court delivered (*ex tempore*) by Mr. Justice Edwards on the 12<sup>th</sup> of  
March 2024.**

**Introduction**

**1.** Before this Court is an application brought by the Director of Public Prosecutions (i.e., “the applicant” or “the Director”) pursuant to s. 2 of the Criminal Justice Act 1993 for review of the sentence imposed on Mr. Jake O’Sullivan (i.e., “the respondent”) by the Cork Circuit Criminal Court on grounds that it was unduly lenient.

**2.** On the 16<sup>th</sup> of May 2023, the court below sentenced the respondent in respect of the following offences:

- (i). One count of possession of a controlled drug with an aggregate value of €13,000.00 or more for the purposes of sale or supply contrary to s. 15A of the Misuse of Drugs Act 1977, as amended (count no. 1 on Bill No. CKDP0049/2022);
- (ii). One count of using a mechanically propelled vehicle without the consent of the owner thereof or other lawful authority contrary to s. 112 (1) of the Road Traffic Act 1961, as amended by s. 65 of the Road Traffic Act 1968 and as amended by s. 18 of the Road Traffic Act 2006 (count no. 1 on Bill no. CKDP0015/2023);

- (iii). Seven counts of dangerous driving contrary to s. 53 (1) of the Road Traffic Act 1961, as substituted by s. 4 of the Road Traffic (No. 2) Act 2011 (count nos. 2 to 8, inclusive, on Bill no. CKDP0015/2023);
- (iv). One count of driving a mechanically propelled vehicle in a public place without a driving licence contrary to s. 38 of the Road Traffic Act 1961, as substituted by s. 12 of the Road Traffic Act 2006 (count no. 9 on Bill no. CKDP0015/2023), and;
- (v). One count of driving a mechanically propelled vehicle whilst there was no insurance covering same contrary to s. 56 (1) and (3) of the Road Traffic Act 1961, as amended by s. 18 of the Road Traffic Act 2006 (count no. 10 on Bill no. CKDP0015/2023).

**3.** In respect of the s. 15A count (count no. 1 on Bill No. CKDP0049/2022), the respondent was sentenced to 3 years' imprisonment, which was to date from the 2<sup>nd</sup> of February 2023 with the respondent was receiving credit for time served on remand between the 21<sup>st</sup> of October 2021 and the 2<sup>nd</sup> of February 2022.

**4.** In respect of the count of unlawful taking contrary to s. 112 (1) of the Road Traffic Act 1961, (count no. 1 on Bill No. CKDP0015/2023) the appellant received a sentence of twelve months' imprisonment consecutive to the sentence imposed in respect of the s. 15A count on Bill No. CKDP0049/2022, but suspended in its entirety on certain terms.

**5.** All other counts on Bill No. CKDP0015/2023 were taken into consideration, but with various periods of disqualification from driving also being imposed. In respect of two counts of dangerous driving (count nos. 2 and 3 on Bill No. CKDP0015/2023), the court below ordered that the respondent be disqualified from holding a driving license for a period of 4 years from the date of sentencing. In respect of the remaining dangerous driving counts (count nos. 4 to 8, inclusive, on Bill no. CKDP0015/2023) and in respect of the driving without a license count and the count of driving without insurance, the respondent was disqualified from holding a driving license for a period of 6 years from the date of sentence.

**6.** The basis on which the Director brings her present application is set out in her grounds of application contained in the Notice of Application for Review of Sentence dated the 1<sup>st</sup> of June 2023. Those grounds provide:

- "1. *The learned sentencing Judge erred when assessing the headline sentence in respect of the s. 15A drugs count as being one of 5 years.*
- 2. *The learned sentencing Judge erred when assessing the headline sentence in respect of the s.112 road traffic count as being one of 2 years.*
- 3. *The learned sentencing Judge thereafter erred in placing too much weight on the mitigating factors and the personal circumstances of the Respondent, thereby imposing an ultimate sentence which was substantially outside the norm given all the facts of the case".*

### **Factual Background**

**7.** At the sentencing hearing of the 16<sup>th</sup> of May 2023, a Detective Sergeant Kieran O'Sullivan (otherwise "D/Sgt. O'Sullivan") gave evidence in relation to the factual background to the respondent's offending. It should be stated at the outset that the respondent appeared before the court below on that date for sentencing on counts contained in three separate indictments, but the

present application is made only in respect of the sentences imposed on two of those indictments. The first of the three indictments, and the sentence in respect of which is not the subject of the present undue leniency application, contained counts of violent disorder, production of an article, and assault causing harm. The Director's present application to this Court relates exclusively to the two other indictments, which indictments respectively contain counts of offending contrary to the Misuse of Drugs Act 1977 and offences contrary to Road Traffic legislation.

*CKDP0060/2022 – "The Violent Disorder Matter"*

**8.** The appellant received concurrent sentences of two years' imprisonment for the violent disorder, and three years' imprisonment for the assault causing harm. The circumstances were serious. In the course of participating in the violent disorder incident, the appellant had struck another individual about the head with a steel claw hammer, rendering him unconscious, and causing him lacerations to the head and cracked teeth.

**9.** The sentence for the s. 15A offence was to run concurrently with the sentences imposed for the violent disorder and the s. 3 assault.

*CKDP0049/2022 – "The Drugs Matter"*

**10.** On the 9<sup>th</sup> of October 2021, gardaí executed a search warrant obtained pursuant to s. 26 of the Misuse of Drugs Act 1977, as amended, at the home address of the respondent on the Fairfield Road, Farranree in Cork. The respondent was present at the premises with his mother on the occasion of the gardaí's attendance at the address. The details of the search warrant were explained to them, and the house was thereafter searched. During the course of this search, gardaí discovered a quantity of cocaine and a quantity of cannabis located in the respondent's bedroom. Gardaí also found in the course of the search various items of drugs paraphernalia, including weighing scales and bags for drugs. Following this discovery and the completion of the search, gardaí arrested the respondent and thereafter conveyed him to Mayfield Garda Station, where he was subsequently detained and interviewed on three occasions. During the course of these interviews, he made certain admissions in relation to the drugs seized, stating that he was holding them for someone else. The drugs in question were sent for analysis, which analysis confirmed the substances in question and estimated their respective values. The cocaine seized had an estimated street value of €18,000, and the cannabis was valued at €200. The respondent's phone was also seized and examined, which examination yielded evidence of drug dealing.

*CKDP0015/2023 – "The Road Traffic Matters"*

**11.** In relation to the road traffic counts, D/Sgt. O'Sullivan tendered the following evidence to the sentencing court. These offences occurred in the context of a road traffic matter, each happening at short intervals to one another on the 18<sup>th</sup> of July 2022. The respondent was on bail at the time in respect to the drugs matter just outlined. On the 18<sup>th</sup> of July 2022, at approximately 18:00, gardaí took a report of a motorbike having been stolen at an address in the Victoria Cross area of Cork. The injured party informed gardaí that he had parked the bike at this address at approximately 17:15 and when he returned to it a short time later, he discovered that it was missing. Just before 19:00 that evening, gardaí were on routine patrol in and around the Gurrabraher area of Cork when they observed a male riding a bike with no helmet. Gardaí indicated to the male to stop, and on approaching the male they immediately recognised him as

Mr. Jake O'Sullivan, the herein respondent. Having taken the details of the bike, they discovered that it was reported stolen. The respondent did not stop for gardaí, and it drove in a dangerous manner at various locations around the Knocknaheeny area. The manner in which it was driven by the respondent included driving on the wrong side of the road on numerous avenues, including Knocknaheeny Avenue, Churchfield Green, Churchfield Way Upper, and the Churchfield Road. As the vehicle approached Dunmore Gardens, the respondent lost control of it; he collided with a footpath, and subsequently fell off the bike. Gardaí arrested the respondent and thereafter conveyed him to Gurranaברה Garda Station where he was interviewed on one occasion. He made no admissions in the course of this interview.

### **Personal Circumstances of the Respondent**

**12.** The respondent was aged approximately 21 years at the time of offending in the drugs matter, and he was aged approximately 22 years at the time of offending in the road traffic matter. He was 23 years of age when he was sentenced by the court below.

**13.** The respondent's previous convictions were outlined to the court below by D/Sgt. O'Sullivan. It was said that the respondent had thirty-nine previous convictions, the earliest of which dated from the 10<sup>th</sup> of May 2019 and the most recent was dated the 22<sup>nd</sup> of March 2023. He had no Circuit Court convictions to his name. Two of his previous convictions were for offending contrary to s. 15 of the Misuse of Drugs Act 1977; six were for possession contrary to s. 3 of the Misuse of Drugs Act 1977; five public order convictions; three convictions for breach of domestic orders; and the remainder of his previous convictions were for road traffic offences. Of the respondent's previous road traffic convictions, seven were for unlawful taking of a vehicle contrary to s. 112 of Road Traffic Act 1961.

**14.** D/Sgt. O'Sullivan stated that the respondent was known to gardaí in Cork, having come to adverse attention for the last couple of years preceding his sentencing in respect of the present matters. He stated that the respondent was actively involved in the sale and supply of drugs around the north side of Cork City. There was cash found at the respondent's address to the tune of €1,700. D/Sgt. O'Sullivan stated that the respondent did not own his own vehicle, and gardaí had no information with respect to any bank account held by the respondent.

#### *Evidence of Mrs. Karen Corcoran*

**15.** Mrs. Karen Corcoran, the mother of the respondent, gave evidence at the sentencing hearing. She outlined the circumstances in which the respondent grew up. She stated that her husband, the respondent's father, had difficulties with gambling and addiction, and arising out of these difficulties she made the decision to walk away from the marriage and to take her children, including the respondent, with her. She stated that this affected the respondent hugely on account of the closeness of his relationship with his father. Subsequent to her decision to walk away, Mrs. Corcoran said that the respondent's father "*just dropped Jake totally*", that there was no further contact and support, and that his father was absent on noteworthy occasions, such as the respondent's confirmation. The net result was that the respondent's father did not participate in the respondent's life; and the respondent experienced no "*fatherly structure or support*".

**16.** Mrs. Corcoran provided further detail in relation to the respondent's misbehaviour and offending. She stated that his misbehaving started in his youth, and that within six months of his

secondary schooling his education level dropped hugely due to his acting out and his bad behaviour. She outlined that she had a zero-tolerance attitude to drugs, and that she would report her son's drug-related behaviour to gardaí. She stated that one of the unauthorised taking of a vehicle convictions the respondent held arose from him stealing her vehicle, and that she had reported him to gardaí in respect of this offending also. The barring orders against the respondent were obtained by Mrs. Corcoran. She stated that she had tried every method of "*being cruel to be kind*".

**17.** The court below had previously heard from D/Sgt. O'Sullivan to the effect that the respondent was a drugs user; Mrs. Corcoran outlined efforts at rehabilitation. The respondent had attended a programme in Heron House where he was doing acupuncture and was attending there with a view to going into treatment. Mrs. Corcoran stated that she had tried on numerous occasions with the respondent to get him into treatment but that unfortunately the resources available were stretched, and it was therefore impossible for the respondent to get help. She stated that the only reason why the respondent stopped going to Heron House was because he went back to prison. The respondent also attended both NA (or "narcotics anonymous") and AA meetings. Heron House told the respondent that while he did not have a problem with drink, alcohol was "*his trigger*" for cocaine use, as the respondent's consumption of drugs reportedly coincided with the alcohol consumption. The respondent had two sponsors, one for AA and one for NA.

**18.** Mrs. Corcoran also informed the sentencing court that the respondent is the father to a baby, that he co-parents this child, and that he is good friends with the mother of his child. She stated that the respondent becoming a father seemed "*to really, really eventually kick into him that what he was doing was effecting (sic) everybody else*". Mrs. Corcoran stated that her position was that if the respondent had drugs onboard and she had the child that she would ring the gardaí to get him out of the house because she would not take the risk of not being able to see her grandchild on account of the respondent's behaviour.

**19.** Mrs. Corcoran informed the sentencing court that her job as mother is to look after her child, and that she will support him. She stated that he had been "*very, very stupid*" and had made "*horrible choices that have had horrible consequences*" but that she could see the respondent coming back with help and support; however, she stressed that continued drug use would result in him not being allowed anywhere near the family.

**20.** Mrs. Corcoran provided further detail in relation to the respondent's work history. She stated that he had had three jobs before his last job, and that they were all labouring jobs on building sites. She stated that the reason his continued employment in this regard ceased was on account of practical difficulties in getting to work owing to his inability to drive. The respondent had pursued an apprenticeship in block laying and stonemasonry. Mrs. Corcoran stated that the respondent had been truthful with his employer as regards his situation and she stated that his employer was aware of the likelihood of the respondent not completing the apprenticeship on account of imprisonment. Notwithstanding this, the employer decided that he would give the respondent a chance, and the respondent positively engaged with this work. A letter from this employer was tendered to the sentencing court.

*Evidence of Mr. Philip Singleton*

**21.** Mr. Singleton gave evidence at the respondent's sentencing hearing in the court below. Mr. Singleton was the respondent's sponsor at NA. He averred that the respondent was very enthusiastic when he started attending NA meetings and that he became more interested particularly after the birth of his child. Mr. Singleton stated that the respondent knew that there was a different way of life, that he had to be honest with himself, and that he was very open to it. He stated that when the respondent does eventually leave prison he will have to go through the full 12-step programme in relation to NA. He did not detail what that programme entails.

**Sentencing Judge's Remarks**

**22.** The sentencing judge identified the following factors aggravating the respondent's offending in respect of the drugs matter: that the respondent was found in possession of €18,000 worth of cocaine; that he had weighing scales and evidence of drug dealing on his phone; and that he had two previous convictions for offending contrary to s. 15 of the Misuse of Drugs Act 1977.

**23.** She noted that the presumptive mandatory minimum of 10 years' imprisonment applied in the present case. She made the following remarks in respect of this:

*"The Court of Appeal has said that the way we should deal with these cases is to initially ignore the presumptive mandatory minimum and see where the accused comes in terms of culpability. So, in ignoring, at this stage, the presumptive mandatory minimum, in my view, the accused comes within the low mid range in terms of culpability. He is not a principle organiser (sic) who enjoys huge profits. He has no trappings of wealth. He is also not what is commonly referred to as a gardener type person who's been exploited, but he is somebody who is addicted to cocaine.*

*In my view, I have to consider whether there are exceptional or specific circumstances that would render it unjust to impose the presumptive minimum and I believe there are such exceptional circumstances in this case. The first is that the accused himself is a cocaine addict. He has instructed his probation officer that he did owe money for a drug debt and he is also a very young man and I think it would be unjust to impose the presumptive minimum of 10 years' imprisonment. **In my view, the headline sentence in this case should be five years' imprisonment and because of the plea of guilty that should be reduced to four years' imprisonment.** I'll deal with the mitigation when I'm dealing with the other offences"*

(Emphasis in bold to indicate the headline sentence nominated)

**24.** In relation to the respondent's offending in respect of the road traffic matter, the sentencing judge identified the following aggravating factor: that he had previous convictions, and she noted that one of these was for unauthorised taking of the respondent's mother's car. She nominated as the headline sentence in respect of the unauthorised taking count one of 2 years' imprisonment.

**25.** Turning to mitigation, the sentencing judge identified the following as factors enuring to the respondent's benefit: that he had entered guilty pleas; his drug addiction, his efforts at and enthusiasm for rehabilitation; his work history and his commencement of an apprenticeship, and

the reference the court below received from his employer; the content of Mrs. Corcoran's evidence regarding the respondent's family background, and; that he had a young child, the fact of which appears to be a source of motivation for change, and that owing to his mother's involvement with that child it was likely the respondent will be able to be part of that child's life.

**26.** Adjusting the foregoing headline sentences to account for mitigation, the sentencing judge imposed 3 years' imprisonment on the s. 15A count and she imposed one year's imprisonment on the unauthorised taking count consecutive to the sentence for s. 15A offending. To allow for rehabilitation, the sentencing judge suspended the sentence for the unauthorised taking count in its entirety for a period of two years in the respondent's own bond of €100. The sentence was backdated to when the respondent went into custody, and credit was given for time already served.

**27.** In respect of the dangerous driving matters, the court below made disqualification orders for 4 (count nos. 2 and 3) and 6 years (count nos. 4, 5, 6, 7, 8, 9, and 10), respectively. A forfeiture order was made in respect of the drugs and cash received.

### **The Court's Analysis and Decision**

**28.** In exchanges with the Court at the oral hearing of the appeal, counsel for the Director confirmed that the major focus of his contention that the aggregate overall sentence imposed for the s. 15A drugs offence on Bill No. CKDP0049/2022 on the one hand, and for the road traffic offences on Bill No. CKDP0015/2023 on the other hand, was unduly lenient, was the decision of the sentencing judge to wholly suspend the sentence for the latter.

**29.** We can well understand the Director's concern in that regard. A disinterested observer, perhaps not in possession of the full facts, might easily conclude that the respondent was in effect getting a free ride in respect of the road traffic offences, by virtue of there being no carceral component to be actually served. Moreover, structuring a sentence in that way is arguably difficult to reconcile with the express sentencing policy requirements set by the Oireachtas in s. 11 of the Criminal Justice Act 1984, on foot of which a sentencing court, faced with an offender who has further offended while on bail, is required to treat that circumstance as an aggravating factor and also, where possible, make any sentence(s) for the offence(s) committed while on bail consecutive to the sentence imposed for the offence for which he/she had been on bail. In the present case, while the wholly suspended sentence for the driving offences was expressed to be consecutive to the sentence imposed for the s. 15A offence, the consecutivity requirement would only become operative in any meaningful way in the event that the suspended portion was required to be served.

**30.** We are of the view that the sentences on both bills, viewed in isolation and ignoring any consecutivity requirement, were very lenient indeed. In holding this view, we note that in the case of the s. 15A offence the respondent had two previous convictions for relevant offences, namely for possession of drugs for sale or supply contrary to s. 15 of the Misuse of Drugs Act 1977. Moreover, in the case of the unlawful taking offence on which the suspended sentence was imposed, that offence was committed while the respondent was on bail and in circumstances where, again, there were relevant previous convictions, namely seven previous convictions for unlawful taking. Yet another element to which regard must be had was the fact all of the road traffic offences were taken into consideration in the imposition of the sentence imposed on the

unlawful taking count, a factor that would normally lead to an uplift in the nominated headline sentence.

**31.** As against all of that, counsel for the respondent has asked us to focus very much on the trial judge's reasons for imposing the sentence that she did. The principles governing undue leniency reviews are very well established at this stage, and the jurisprudence on that emphasises that a reviewing court should give great weight to the reasons expressed by the sentencing judge at first instance. Further, counsel for the respondent makes the point that there was significant mitigation available to the respondent in these cases. He had pleaded guilty at an early stage. He had been cooperative. It was said that at the root of his criminal offending was an underlying drug problem, and that he was imbued with a firm resolve to address it. It was suggested that he had taken positive steps in that regard. He had sought admission to the Heron House project and, while they were not in a position to give him a place immediately, he had followed their advice to enrol with Narcotics Anonymous and with Alcoholics Anonymous. A witness from Narcotics Anonymous had confirmed the position in regard to that to the sentencing court. Further, the respondent's mother had given poignant testimony as to her son's change of attitude and determination to turn over a new leaf. A further impressive feature of the case was that, prior to being sentenced, the respondent had secured an apprenticeship in block-laying, had been doing well in that, and there was a letter from his employer, with whom he had been candid about his legal difficulties, confirming that his job would still be available to him on his eventual release from prison.

**32.** We think this is a very finely balanced case. It is not sufficient, however, that we regard the sentences imposed at first instance, either individually or cumulatively, as having been very lenient. It must be demonstrated that they are unduly lenient in the sense of being a substantial departure from the norm. In that regard it matters not whether the members of this Court would have imposed a different sentence or sentences at first instance to that or those imposed by the sentencing judge at first instance. That is not the test. We have, as urged upon us by counsel for the respondent, considered the reasons put forward by the sentencing judge at first instance in great detail. Having done so, we are not persuaded at the end of the day that the sentences imposed in this case represented a substantial departure from the norm, given the strength of the evidence as to the respondent's resolve to reform and the steps that he has taken towards doing so, confirmed by independent evidence. The sentencing judge was not obliged to prioritise rehabilitation over retribution and/or deterrence, and she would not have been liable to criticism had she opted not to do so. But in circumstances where she clearly regarded the asserted determination of the respondent to rehabilitate as representing a genuine resolve which ought to be encouraged and supported, and where she believed that the interests of society would be best served if this accused could once and for all address his drug addiction issues, we are satisfied that she acted within jurisdiction in opting to prioritise rehabilitation over other objectives of sentencing in this particular case. We find no error of principle in her decision to do so.

**33.** As pointed out by counsel for the respondent a suspended sentence is still a sentence. We are satisfied that, as counsel for the respondent has submitted, there is no evidence that the sentencing judge failed to take into account the policy considerations reflected in s. 11 of the Criminal Justice Act 1984. She acknowledged the consecutivity requirement in how she structured



the sentence, and it may be inferred that notwithstanding that the respondent's culpability was to be regarded as having been aggravated by his commission of the road traffic offences while on bail, that did not preclude her, once she had nominated an appropriate headline sentence, from imposing a wholly suspended sentence as the post-mitigation sentence in furtherance of the penal objective of rehabilitation.

**34.** In conclusion, we refuse the application brought by the Director. In our view, the sentences imposed, although very lenient, were not unduly lenient. In refusing the Director's application, we must impress upon the respondent that he is extremely fortunate that the sentencing judge at first instance in this case deemed him worthy of the chance that she opted to give him. The suspended sentence that she imposed will continue to hang over him, and should he breach the terms on which that sentence has been suspended such that he is required to serve it, he will, in that event, have nobody to blame but himself. Further, if, following the expiration of the period for which the sentence is suspended, he offends again, it may prove very difficult for him to persuade another sentencing court to show him further mercy. We very much hope, therefore, that he will now grasp the chance that he has been given, and that he will not find himself before the courts again.